IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 12TH DECEMBER 2007 / 21ST AGRAHAYANA 1929

WA.No. 1988 of 2007()

AGAINST THE JUDGEMENT IN WPC.20165/2006 Dated 02/07/2007
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APPELLANT: PETITIONER

PRASEETHA KUMARI V.C., VETTIKOMBU
PADINJARE VEETTIL, NARIKUNDU P.O., CHEENGAVALLAM,
AMBALAVAYAL, WYANAD.

BY ADV. SRI.K.B.GANGESH

RESPONDENTS: RESPONDENTS:
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1. THE KERALA PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECRETARY, PATTOM PALACE P.O.,
THIRUVANANTHAPURAM.

2. THE STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, DEPARTMENT OF
AGRICULTURE, SECRETARIAT, THIRUVANANTHAPURAM.

BY ADV. SRI.ALEXANDER THOMAS,SC, KPSC
GOVT. PLEADER SRI.SANDESH RAJA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 12/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S.RADHAKRISHNAN & T.R.RAMACHANDRAN NAIR, JJ.

W.A.No.1988 OF 2007

Dated this the 12th day of December, 2007

JUDGMENT

Radhakrishnan, J.

Writ petition was preferred by the appellant herein seeking a writ of certiorari to quash Ext.P2 order passed by the PSC and also a writ of mandamus commanding respondents to call the petitioner for interview and assessment of suitability for the post of Agricultural Assistant Grade II. The learned Single Judge did not grant the prayer sought for by the petitioner and hence this appeal.

2. Public Service Commission vide Ext.P1 notification dated 18/11/2005 invited applications for appointment to the post of Agricultural Assistant Grade II. The qualifications prescribed for the post are:

(A)(i) Diploma in Agricultural by the Kerala Agricultural University or its equivalent.

In the absence of qualified hands from under item(i)above

(ii) ii) Vocational Higher Secondary Certificate in Agriculture

In the absence of qualified hands under items (i) & (ii)

iii) (1) Pass in SSLC or its equivalent with Agriculture as optional subject.

OR

(2) Pass in SSLC or its equivalent and a recognised training in Agriculture.

OR

(3) Post Basic School leaving certificate with Agriculture as as optional subject.

(B) Good physique.

3. It is stated that persons who are in possession of a Diploma in Agriculture Science awarded by the Kerala Agricultural University will have to pass the written examination conducted by the Public service Commission and will be exempted from the Endurance Test, prescribed in G.O.(Ms)No.312/75/Agri. Dated 16/10/1975. It is also stated that all candidates for Direct Recruitment except Diploma holders in Agriculture will have to undergo an endurance test and a written/Objective Type Test conducted by Public Service Commission. Petitioner along with 7 persons applied for the post on the basis of the notification. Petitioner came out successful in the written test and she was

included in Ext.P4 probability list. Petitioner is a physically handicapped person. In the application she has specifically stated that she has 40% disability in respect of her eye sight. Application submitted by her was entertained and she was directed to appear for written test. She appeared and she came out successful and was included in Ext.P4 probability list. Later PSC issued Ext.P2 letter dated 11/07/2006 to the petitioner stating that physically handicapped persons are ineligible to apply for the post and therefore the application submitted by the petitioner on 02/01/2004 will stand rejected. Challenging the said order petitioner has approached this court. Learned counsel for the petitioner submits that even though her application was rejected, she came to know that applications of two other persons who are also handicapped were accepted and one of them was included in the main list. Other person who is from scheduled caste community was included in the supplementary list. Learned counsel for the petitioner submits that since two other persons were already included in the ranked list, there is no justification in rejecting the application submitted by the petitioner on the ground that she is a physically handicapped person.

4. Public Service Commission filed a counter affidavit on

14/11/2007 stating that two candidates out of the 7 physically handicapped candidates included in the probability list were found eligible and were interviewed for assessing their suitability. It is stated that petitioner has not secured minimum marks for including in the probability list and hence her suitability was not assessed and was not included in the ranked list. It is stated that marks of the last candidate included in the main list was 55. Petitioner had secured only 50 marks. Further it is stated that out of the two eligible physically handicapped persons who were included in the ranked list, one candidate had secured 55 marks in the written test and other candidate belonged to scheduled caste community had secured 41marks. Since the petitioner had not secured 55 marks,her candidature was not considered. Ext.P2 communication issued by the PSC to the petitioner clearly shows that PSC took a decision not to entertain the applications submitted by physically handicapped persons. At the same time on the basis of the marks, they had already entertained the applications of two other handicapped persons.

We are of the view that if applications submitted by two handicapped persons can be entertained, there is no reason to reject the application submitted by the petitioner especially when

she has passed the written test and was included in the probability test. If applications of physically handicapped persons are entertained, then Clause 5 in Part II of General Condition would automatically apply. Clause 5 specifically says “in all cases of selections, except those specifically excluded, the Physically Handicapped Candidates referred to in sub-para (vii)of para 2 above will be given grace marks at the discretion of the Commission subject to a maximum of 12% marks to the blind and the deaf and dumb and 10% marks to the orthopaedically handicapped. It is the common case that if Clause 5 applies, petitioner would get five marks. In fact clause 5 was applied by the PSC and the petitioner was included in the probability list. Contention of the PSC that physically handicapped person should get atleast 55% marks in the written test , then only he would be included in the ranked list cannot be sustained. Clause 5 comes to the rescue of physically handicapped persons. In fact clause 5 was applied by the PSC and petitioner was included in the probability list.

We are of the view that if PSC entertains the applications of physically handicapped persons, there is no justification in rejecting the application submitted by the petitioner. Ext.P1

notification only says that candidate should have good physique. There is nothing to show that petitioner does not have good physique. The only thing is that she has disability in respect of her eye sight. Doctor has certified it as 40% disability. In our view petitioner has satisfied the qualifications prescribed in Ext.P1 notification and was rightly included in the probability list. If that be so, she is also qualified to be called for interview and can be subjected to suitability test. Writ Appeal is therefore allowed and Ext.P2 is set aside. We direct the PSC to entertain the application submitted by the petitioner as was done in the case of other two physically handicapped persons. Needless to say PSC shall take consequential steps for including petitioner's name in the appropriate place in the ranked list.

K.S.RADHAKRISHNAN
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

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